IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/01/2004

CORAM

THE HONOURABLE MR. JUSTICE P.D.DINAKARAN

W.P.No.6843 of 2003

A. Balasubramaniam,
S/o. Angamuthu Mudaliyar,
19-B/42, Subramaniya Puram,
Salem - 7. .....Petitioner

-Vs-

The Assistant General Manager,
State Bank of India,
Fort, Salem - 1. .....Respondent

Writ Petition, under Article 226 of the Constitution of India,
praying for issuance of a Writ of Certiorarified Mandamus, as stated therein.

For Petitioner :: Mr. G. Arulmurugan

For Respondent :: Mr. K.S.Sundar

:O R D E R

By exercising the powers conferred under clause 521(2)(a) of
the Sasthri Award, the respondent by his proceedings dated 19.02.2003 placed
the petitioner under suspension.
2. The impugned order dated 19.02.2003 reads as follows:-
"Disciplinary Proceedings under Memorandum
of Settlement dated 10.04.2002
It is alleged against you before the Hon□ble High Court of
Madras, in Writ Petition No.10158 of 2002 filed by Smt. S. Angammal in which
you are the second respondent that you have committed certain criminal acts.
During the proceedings it has come to our knowledge that a criminal case is
pending against you before the Hon□ble PASJ Court, Salem under Section 341,307
read with Section 511 I.P.C.

2. Pending initiation of appropriate disciplinary action
against you, you are placed under suspension with immediate effect under para
3 (a) of settlement dated 10.04.2002.

3. You are entitled to subsistence allowance as per latest
service conditions as applicable to you.

4. You are required to furnish your residential address to the Assistant General Manager, Salem Branch and keep him informed of any subsequent changes so that the bank can communicate to you in future.

5. Please acknowledge receipt of this letter by subscribing your signature with date on the duplicate copy of this letter.
Yours faithfully,
Sd/-
Assistant General Manager
(Disciplinary Authority) "
3. Aggrieved by the impugned order of suspension, the petitioner has filed this writ petition for issuance of a Writ of Certiorarified Mandamus, to quash the order and also for a direction to the respondent to reinstate the petitioner into service.

4. The order impugned in the writ petition came to be passed on account of a criminal case, pending before the learned Principal Assistant Sessions Judge, Salem for the offence punishable under Sections 34 1, 307 read with Section 511 of I.P.C., with reference to the dispute between the petitioner and his relatives and not with reference to any of official transactions in the bank.

5. It is true that the complainant in the criminal case has already approached this Court by way of a writ petition in W.P.No.10158 of 2002 with a prayer to direct the respondents to take disciplinary action against the petitioner herein and the same was disposed of by an order dated 21.03.2003, after recording the order of suspension dated 19.02.2003 passed against the petitioner herein.

6. Learned counsel appearing for the petitioner contends that the impugned order of suspension is perverse and the same is passed without jurisdiction as clause 521(2)(a) of the Sasthri Award is not applicable to the case on hand.

7. For better appreciation, clause 521(2)(a) of the Sasthri Award is extracted as below:-

"When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted; and in such a case he may also be suspended".

8. On the admitted facts of the case, it is clear that the dispute between the members of the petitioner's family was the basis for the criminal case and there was no allegation against the petitioner whatsoever by the respondent bank in the above criminal case nor the allegations referred to therein are related to any of the petitioner's official discharge of duties in the bank. That apart, it is not in dispute that the petitioner is likely to be retired on 31.10.2004.

9. To take a disciplinary action, much less to pass an order of suspension under clause 521(2)(a) of the Sasthri Award, the following ingredients are required to be satisfied with:-
(i) in the opinion of the management (bank), the employee (delinquent) should have committed the offence;

(ii) The management (bank) should take steps to prosecute him or get him prosecuted with reference to such offence. In other words, there should be an allegation against the employee providing the causation for initiating the prosecution by the bank or on its behalf.
In the instant case, even though the first ingredient is satisfied with, the latter is not complied with.

10. It is therefore clear that the allegations referred to in the criminal case are not at all relevant to attract clause 521(2)(a) of the Sasthri Award, warranting suspension pending the criminal case, inasmuch as none of the official duties of the respondent bank have been violated by the petitioner and therefore, as rightly contended by the learned counsel for the petitioner, the mere fact that the criminal case filed against the petitioner had been referred and recorded in the order of suspension itself cannot be a ground to justify the impugned order of suspension, particularly when the power to place the petitioner under suspension contemplated clause 521(2)(a) of the Sasthri Award is not attracted.

11. The impugned order of suspension is therefore liable to be quashed and the same is hereby quashed. The writ petition is allowed. No costs.

Dpn/-

To:

The Assistant General Manager,
State Bank of India,
Fort, Salem 1.